

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3217/1dn
MPG:jld:rs

November 12, 2013

Matt Rossetto:

This is an introducible draft incorporating the changes we discussed. Once you have reviewed the draft, let me know, and I will get the senate companion bill drafted.

Note that the draft prohibits any out-of-state broker, as defined in the draft, from doing any of the following, whether or not the out-of-state broker has entered into a cooperative agreement:

1. Enter into a listing agreement concerning real estate located in this state.
2. For commission, money, or other thing of value, promote the sale, exchange, purchase, option, rental, or leasing of real estate located in this state, including by posting signs on the property.
3. For commission, money, or other thing of value, sell, exchange, rent, or lease or attempt to sell, exchange, rent, or lease real estate located in this state.

Those restrictions are based on the revised drafting instructions and the definition of "broker" under s. 452.01 (2). Those restrictions go further than current law insofar as current law allows a person, including any out-of-state broker, to engage in the business of selling or exchanging interests in real estate if a pattern of sales or exchanges is not established. Under current law, "[f]ive sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges." See s. 452.01 (2) (b). The draft would prohibit an out-of-state broker from being compensated for any such sale or exchange of real estate regardless of whether a pattern of sales or exchanges is established.

Under the draft, if an out-of-state broker is a party to a cooperative agreement, the out-of-state broker would presumably not be prohibited from showing real estate under s. 452.01 (2) (bm), negotiating real estate transactions under s. 452.01 (2) (bm), or doing any of the things listed under s. 452.01 (2) in connection with a transaction involving a business if the transaction does not involve real estate, all subject to the cooperative agreement. Such an out-of-state broker would also not be prohibited from doing any of the things listed under s. 452.01 (2) concerning time shares, also subject to the cooperative agreement.

Please let me know if any of that is contrary to the intent. As I have mentioned in the past, it would be clearer to specifically reference the definition of "broker" under s.

452.01 (2) in stating what an out-of-state broker may or may not do pursuant to a cooperative agreement. Nevertheless, in the draft, I have tried for the sake of clarity and consistency to incorporate the language of the definition of “broker” as much as possible within the parameters of the drafting instructions.

Please do not hesitate to contact me with questions.

Thank you.

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